UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 April 2007</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-14</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-14</u> is/are rejected.

7)☒ Claim(s) <u>1-3,6,7,9,11 and 13</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>23 May 2006</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is in response to communications filed on 4/30/2007. Claims

1-14 are pending in this Application.

Foreign Priority

2.   Acknowledgement is made of applicant's claim for foreign priority under 35 U.S.C

119(a-d) based on EP03104417.5, filed on **11/27/2003**.

Claims

3.   Claims 1-3, 6-7, 9, 11, and 13 are objected to because of the following

informalities: the claims contain reference characters pointing to components of the

invention. These reference characters should be omitted from the claims. Appropriate

correction is required.

4.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent
Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV,
reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claim 14 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 14 defines a computer program product embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed computer program product can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a
person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived
by the manner in which the invention was made.

6.   ***Claims 1-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable***

over Tessman, JR. et al. (US PGPub 2002/0135801) [hereafter Tessman] in view of

Sono (US Patent 5,829,044) [hereafter Sono].

7.   As to claim 1, Tessman discloses a data-storage system (Fig. 1, 100) comprising

processor means (host computer device 22) for obtaining identifier data of media

content existing in the system used for identifying the media content (Page 2, 0019-

0021, Page 3, 0036, Page 4, 0037, 0041, Page 5, 0043-0046, Page 6, 0063, Page 7,

0066, 0068, the host device comprises an image farm (Fig. 2 and Fig. 3, 240)

component that generates metadata/identification data (hereafter ID data) for image

data within the system and provided by a corresponding client device (10), the ID data

is used for identifying and locating the images presently stored within the system), a

memory (Fig. 3 and Fig. 4, 2404) for retaining the identifier data (Page 4, 0041, Page 5,

0048, 0050-0051, Page 9, 0085, image farm databases (2404) retain the metadata/ID

data associated with the images stored within the system), and a retrieval means (244)

arranged to allow retrieval of the media content using the identifier data (Page 5, 0043,

Page 9, 0087-0088, the account manager (244) receives the image identifiers to

determine the storage path of a digital image stored within the system and then

retrieves and displays the image to the requesting user/client by controlling an image

read server (2416) to locate the stored image file).

It is however noted that Tessman fails to disclose retaining identifier data after

the media content is absent from the system.

On the other hand, Sono discloses a multimedia data filing system (Fig. 1, 1) that

comprises a hard disk drive (4), running a management program to manage and control

the storing of multimedia data, retains identifier data (Fig. 2, 26) for the stored

multimedia data after the media is removed from the system (Col. 4, 42-52, 62-64, Col.

5, 1-16, 31-46, Col. 6, 32-50, Col. 7, 19-63, Col. 9, 43-67, Col. 10, 1-10, when image

data contained within the hard disk drive is removed from the hard disk drive to make

room for newly acquired image data, the catalog file and file path names for the

removed image data are updated within the hard disk drive to include correct

information as to the new location of the removed image file that exists outside of the

system).

It would have been obvious to one having ordinary skill in the art at the time of

invention to include a memory for retaining identification data for media files even after

the media files are removed/absent from a storage system as taught by Sono with the

data-storage system of Tessman because both prior art are directed towards storage

systems that stored media content and use metadata/identification data to locate stored

media upon request of a user and because it would allow the system of Tessman to

inform users of the current locations of images that were previously stored within the

system but currently reside elsewhere, thus allowing the users to find the requested

images/media and enable reproduction of the media once the current location is

identified.

8.   As to claim 2, Sono discloses a CPU (Fig. 1, 6), corresponding to retrieval

means, that runs a management program (Fig. 4) that manages or controls the

multimedia data within the system is arranged to allow retrieval of media content that is

absent from the hard disk drive (4) of the system and stored in a first device (19)

external to the system from the first device to a second device (20-22) external to the

system (Col. 4, 11-13, 28-52, Col. 5, 31-46, 55-67, Col. 6, 1-5, Col. 7, 41-67, Col. 8, 1-

15, the CPU allows retrieval of requested information that is not contained within the

hard disk drive of the system and stored within an optical disk externally located to the

system by retrieving the data from the compact disk, clearing a space on the hard disk

drive for the data, and allowing the data to be reproduced by externally connected

devices (20-22)).

9.   As to claim 3, Tessman discloses the image farm (240) component of the host

computer (22) is configured to generate identifier data by analyzing media content

stored in a storage device (2410) for retrieval of the media content from the storage

device (Page 7, 0066-0068, Page 8, 0069, 0072, Page 9, 0083, 0085, the metadata/ID

data is generated once a storage path for the digital images is determined and after

storage of the images, new records including identifiers according to the stored media data are generated).

Additionally, Sono discloses generating identifier data stored in the hard disk drive by analyzing media content stored within an external storage device (19) (Col. 4, 58-67, Col. 5, 1-20, Col. 6, 32-50).

10.   As to claim 4, the Tessman and Sono references disclose all claimed subject matter with regards to the comments of claim 3.

11.   As to claim 5, Sono discloses the catalog information (Fig. 2), managed by the CPU (6) executing the management program, is updated when the media content is removed from the hard disk drive, thereby obtaining recently updated ID information (Fig. 2, 27, Fig. 3) after the data is removed from the hard disk drive of the system (Col. 6, 39-50, Col. 7, 19-31).

12.   As to claim 6, Sono discloses the CPU of the system is arranged to receive identifier data (Fig. 2, 27, Fig. 3) from a memory card (18) external to the system which is arranged to obtain/receive the identifier data (27) that is extracted for the associated media content located on the disk (Col. 4, 42-67, Col. 5, 1-30, Col. 6, 33-50, the memory card and the hard disk drive have similar file formats and data from the memory card is loaded onto the hard disk drive of the system).

13.   As to claim 7, Sono discloses a camera used for recording the media content on

the memory card (Col. 2, 43-47, Col. 4, 7, 31-33), and storage means (4) for storing the

media content before the media content is absent from the system (Col. 6, 32-50, Col.

7, 19-31).

14.   As to claim 8, Tessman discloses the processor means (22) is arranged to

enable a user to input the identifier data (Page 6, 0061-0063, Page 7, 0066, Page 9,

0087-0088, account information created by the users of the system are used as ID data

for the images/media stored within the system and the login information of the users are

used to retrieve the media associated with the users information).

15.   As to claim 9, Sono discloses the ID data (Fig. 3) comprises location data

indicating the location of the image data in the external storage device (Col. 7, 41-65).

Additionally, Tessman discloses ID data comprises storage identifier data

indicating a storage device arranged to store the image files (Page 7, 0068, Page 8,

0069-0070, 0072-0075, Page 9, 0085).

16.   As to claim 10, the Tessman and Sono references disclose all claimed limitations

with regards to the comments of claim 9.

Additionally, Tessman discloses the meta-data describing the content of the

stored images comprises a user identity data (Page 5, 0051, Page 9, 0085-0088).

17.   As to claim 11, Tessman discloses the host computer (22) is arranged to select

meta-data describing a stored media file (Page 5, 0050-0051, Page 9, 0083-0085,

0087, the metadata, corresponding to film identifiers, film type, etc., stored within the

system are searchable and selectable), find the identifier data corresponding to the

selected meta-data (Page 9, 0086-0088, the metadata used to identify the image leads

to the finding of the first and second image identifiers that specify the stored locations of

the media files), determine a content-storage device in which the desired content is

stored (Page 7, 0067-0068, Page 9, 0087, the location/directory of the storage facility

(2414) is determined by the obtained ID information), determine a presentation device

for presenting the content (Page 9, 0087, the account manager determines which

subscriber/client is eligible to receive the image for reproduction and thus determines

which presentation device (Fig. 1, 10) connected to the system is to receive the

corresponding image), and enable the presentation device to obtain the content from

the content storage device (Page 9, 0087-0089, the account manager enables the

identified clients to retrieve and display the corresponding image that is held within the

storage device/location identified by the ID data associated with the image).

18.   As to claim 12, the Tessman and Sono references disclose all claimed limitations

with regards to the comments of claim 7.

19.   As to claim 13, the Tessman and Sono references disclose all claimed limitations

with regards to the comments of claim 1.

20.   As to claim 14, the Tessman and Sono references disclose all claimed limitations

with regards to the comments of claim 9.

        Additionally, Tessman discloses a controller (Fig. 1, 24) software application that

allows the host device of the system to function accordingly (Page 2, 0022). Also, Sono

discloses a management program (Fig. 4) that allows the system (1) to manage and

control the flow and storage of multimedia files included within the system (Col. 4, 42-

50, Col. 5, 55-67, Col. 6, 1-5).

                                            Conclusion

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael Osinski whose telephone number is (571) 270-

3949. The examiner can normally be reached on Monday to Thursday 9 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MO

/Jason Chan/

Supervisory Patent Examiner, Art Unit 2622